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on the Elimination
of all Forms of
Racial Discrimination

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COMMITTEE ON THE ELIMINATION OF RACIAL DISCRIMINATION

Forty-eighth session

SUMMARY RECORD OF THE 1135th MEETING

Held at the Palais des Nations, Geneva,
on Thursday, 29 February 1996, at 3 p.m.

Chairman: Mr. BANTON

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Any corrections to the records of the public meetings of the Committee at this session will be consolidated in a single corrigendum, to be issued shortly after the end of the session.

GE.96-15457 (E)

The meeting was called to order at 3.05 p.m.

CONSIDERATION OF REPORTS, COMMENTS AND INFORMATION SUBMITTED BY STATES PARTIES UNDER ARTICLE 9 OF THE CONVENTION (agenda item 6) (continued)

Twelfth and thirteenth periodic reports of the Russian Federation (CERD/C/263/Add.9; HRI/CORE/1/Add.52) (continued)

1. At the invitation of the Chairman, Mr. Kolossovsky, Mr. Chernenko, Mr. Zorin, Mr. Davydov, Mr. Demidov, Mr. Parshikov, Mr. Tcherbak, Mr. Malquinov, Ms. Sulitskaya, Mr. Boitchenko, Mr. Dolgoborodov and Mr. Tchoumarev (Russian Federation) resumed their places at the Committee table.

2. Mr. van BOVEN expressed concern at the system of residence permits (propiskas), which discriminated against members of the population who could not afford to buy property. It also contravened international human rights standards and should be abolished. It was unfortunate that the report of the Russian Federation failed to explain what was being done to protect the most vulnerable sectors of society at a time of economic crisis and transition to a market economy.

3. Investigations were apparently being carried out with a view to prosecuting persons guilty of human rights violations in Chechnya. It would be useful to the Committee if information on such prosecutions and on reparations to victims could be included in the next periodic report. The Committee had met with representatives of the Ingush population, who claimed, inter alia, that 40,000 displaced ethnic Ingush from the Prigorodny district were unable to return to their homes which were standing empty, while 20,000 others had returned but found themselves with no right to security, education, medical care or freedom of movement. He asked the delegation to respond to those claims.

4. Mr. de GOUTTES said that, given the gravity of the situation in North Ossetia, Ingushetia and Chechnya, the Committee should consider asking for additional interim information to be presented at the next session. The relationship between the Presidential Human Rights Commission and the office of the Commissioner for Human Rights was unclear, and he asked whether Mr. Kovalev was still active in either of the two institutions. Finally, be requested information on the CIS Convention of 26 May 1995 on human rights and fundamental freedoms. Did it contain provisions specifically prohibiting racial and ethnic discrimination, and how did it stand in relation to the International Convention on the Elimination of All Forms of Racial Discrimination and the European Convention on Human Rights?

5. Mr. YUTZIS said that the delegation's replies had not dispelled his concern that article 4 of the Convention was not being fully applied. Details on its application should therefore be provided

6. The CHAIRMAN said that there would be no need to request additional interim information on the situation in Chechnya, North Ossetia and Ingushetia, since the next periodic report of the Russian Federation was due on 6 March 1996.

7. Mr. CHERNENKO (Russian Federation) said that the delegation recognized that the Ingush-Ossetian conflict required coordinated efforts on the part of the federal authorities. Following the dramatic events of 1992, a high-level committee had been set up, whose efforts had helped to minimize the number of victims claimed by the conflict. The problem of the return of displaced persons belonging to the Ingush population needed to be addressed at the local level. Approximately 40,000 Ingush had the right to return to their homeland.

8. Mr. KOLOSSOVSKY (Russian Federation) said it was true that the residence permit (propiska) system was not compatible with either the Russian Federation's obligations under international human rights instruments or the national Constitution. However, there were long-standing objections to its replacement by a system requiring only registration with the authorities. There was no discrimination in the accommodation licensing system and it appeared that many non-Russians had taken advantage of the rights provided therein.

9. The problem of internally displaced persons and refugees was most acute in the major cities, such as Moscow and Saint Petersburg whose success in promoting community welfare would depend on the lightening of their economic burden. The President of the Russian Federation had recently stressed that social problems required urgent attention following completion of the first stage of economic reform.

10. Mr. Kovalev was no longer a member of the Presidential Human Rights Commission. The relationship between the Commission and the office of the Commissioner for Human Rights would be defined when the latter became operational.

11. Article 3 of the CIS Convention on human rights dealt with non-discrimination and that subject was also covered by the CIS Convention guaranteeing the rights of persons belonging to national minorities. All CIS instruments would be applied without detriment to other international instruments. Against the backdrop of a difficult transitional period, the authorities were tempering their enthusiasm for reform with restraint and moderation.

12. Mr. Kolossovsky, Mr. Chernenko, Mr. Zorin, Mr. Davydov, Mr. Demidov, Mr. Parshikov, Mr. Tcherbak, Mr. Malquinov, Ms. Sulitskaya, Mr. Boitchenko, Mr. Dolgoborodov and Mr. Tchoumarev (Russian Federation) withdrew.

Sixth and seventh periodic reports of Colombia (CERD/C/257/Add.1; HRI/CORE/1/Add.56)

13. At the invitation of the Chairman, Mr. González, Ms. Carrizosa and Mr. Murillo Martínez (Colombia) took places at the Committee table.

14. Mr. GONZALEZ (Colombia) said that Colombia was in the process of strengthening the rights of the indigenous and Afro-Colombian populations. The Political Constitution, enacted in 1991, provided for a participatory democracy. It also recognized the ethnic and cultural diversity of the country and ensured that Colombia was a social State based on the rule of law. It provided legal guarantees against racial or ethnic discrimination and

enabled the Government to promulgate legislation specifically to protect the rights of the Black and indigenous communities with regard to land and other matters. It recognized the full political, administrative and legal autonomy of indigenous peoples.

15. The National Development Plan known as the "Social Leap Forward" for the years 1994 to 1998, provided for innovative social investment to promote the development of remote communities. The indigenous and Black communities, which were considered part of the least favoured segment of the population, enjoyed special protection within the Social Solidarity Network. It was planned to involve government bodies and non-governmental organizations in programmes geared to promoting awareness of the importance of ethnic and cultural diversity in pursuit of sustainable development.

16. Recent progress in the advancement of the Afro-Colombian communities had been satisfactory; more had been done in the past 5 years than in the previous 450, since the first slaves had been brought into the country. Law No. 70 of 1993 made substantial provision for restructuring, including the establishment of a special electoral district to return two Black members to Parliament for the first time. A Directorate of Black Community Affairs had been established in the Ministry of the Interior; the Director was present at the current meeting. Measures had also been taken to protect natural resources - for example, through the suspension of environmentally damaging mining operations - on the lands of the indigenous and Afro-Colombian communities. Information on such measures had been provided to the Committee. In the five years since the promulgation of the new Constitution, the indigenous communities had been given the means to participate in all aspects of the national life, although much remained to be done.

17. At the conclusion of his term as Head of the Permanent Mission of Colombia to the United Nations Office at Geneva, he found it gratifying to be able to report good progress on an issue as important as the advancement of the Black and indigenous national communities.

18. Mr. MURILLO MARTINEZ (Colombia) said that the recent constitutional and structural reforms reflected the recognition of the contribution made by the Black and indigenous peoples to the national identity. The new Political Constitution provided for legislation and practical measures to secure equality of opportunity for all groups. It was likewise important for a State based on the rule of law to recognize the right to be different, without losing sight of the principle of equity. There were, of course, real problems to be faced, stemming from long-established racial prejudice and discrimination which were found in various forms throughout Latin America and called for wide-ranging action by the State. It was hoped that the pace of judicial reform would soon accelerate as a result of decisions handed down by the Constitutional Court.

19. In addition, substantial progress had been made in the work of the State, departmental and regional consultative bodies which collaborated with the Black and indigenous communities in the development and implementation of national programmes; they had already had a decisive impact in roughly 30 per cent of the departments. Such efforts represented a first step towards implementing Law No. 70 of 1993. The consultation process also served

to identify long-term policy guidelines. In that connection, Law No. 70 sought to ensure that the requisite investment in the Black communities took into account the potential for development based on specific local cultural features. It was hoped that local communities would increasingly be able to use their own resources for social development purposes based on their own cultural aspirations. Such an approach could perhaps be adopted throughout Latin America.

20. Mr. de GOUTTES said that the far-reaching constitutional, legislative and institutional reforms reported by Colombia placed that country in the forefront of the struggle against acts of racial discrimination. The report itself, however, was mainly a catalogue of texts and programmes, saying little about actual situations and problems; moreover, a number of questions raised during consideration of the fifth periodic report had not been adequately answered. For example, Amnesty International and other organizations stressed the continued violence by military forces, paramilitary groups and guerrilleros, whose victims ranged from rural smallholders to street children and, in some cases, human rights activists. More information was needed about the Government's efforts to put an end to that situation. The persistence of traditional social and cultural discrimination was another cause for concern, and a report by the Andean Commission of Jurists referred to the problems of marginalization, illiteracy and infant mortality and the persistence of endemic diseases and epidemics. Information on such matters would be welcome. Likewise unanswered - with reference to article 4 of the Convention - was the question whether the dissemination of racist ideologies was subject to specific criminal penalties. Although the current report contained a list of judgements relating to the protection of the rights of the Amerindian peoples and Afro-Colombian communities, the Committee needed more information about the facts of those cases. Lastly, in connection with paragraphs 50 and 58 of the report, he requested further information on the scope of the judicial and administrative functions assigned to the indigenous communities.

21. Mr. van BOVEN noted that the seventh periodic report contained a wealth of information on legal provisions, institutions and programmes, but was short on factual data. He hoped that that deficiency would be remedied in the replies to questions. Under article 2 of the Convention, substantial information was provided on policies and legislation to protect the rights of the Black and indigenous communities. On the subject of the exploitation of natural resources in the indigenous territories, referred to in paragraph 49, he wished to know who had the right to exploit those resources and what were the rights of the indigenous communities in that regard. The statement that "the Government shall encourage the participation of the representatives of the communities concerned in decisions adopted relating to such exploitation" did not go far enough; what was being done to ensure effective participation? On the question of autonomy dealt with in paragraphs 50 and 51, he asked what was meant by "partial" implementation of the principle of participation and pluralistic democracy. In connection with the establishment of a special electoral district for the indigenous communities, referred to in paragraph 52, he asked whether there was a similar special provision for the Black communities with regard to article 3 of the Convention, he drew attention to the Committee's general recommendation XIX (47) on the

interpretation of that article, which was of continuing relevance to all forms of racial and ethnic segregation, whether deliberate or unintentional, and he hoped that that issue would be addressed in future reports.

22. The information provided under article 4 of the Convention was not really relevant to the mandatory provisions of that article. In its concluding observations concerning the fifth periodic report of Colombia, the Committee had reiterated its concern that article 4 was not properly reflected in the national penal law, and that comment must now be repeated.

23. It was regrettable that the report contained no information on the implementation of article 5 (b) on the right to security of person and protection by the State against violence or bodily harm, whether inflicted by government officials or by any individual group or institution. The situation in Colombia continued to be characterized by serious violations of that right, especially with regard to the indigenous populations. As an example of many reported incidents, he quoted a 1995 report of the Colombia Human Rights Committee, concerning murders by paramilitary groups in the Uraba region, the victims being primarily grass-roots leaders, including indigenous peoples and Afro-Colombians. The same report referred to the disappearance of Wilson José Caceres Gonzales, a well-known peasant leader and mayoral candidate in Savana de Torres, to the existence of a death list issued by the Peasant Farmer Self-Defence Groups of Colombia (ACC), and to evidence of other ACC paramilitary activities in the area. The concern expressed by the Committee in its previous concluding observations about ongoing violence and the apparent inadequacy of the measures taken to protect citizens, especially members of the indigenous population, was still relevant and called for comment.

24. In connection with article 5 (e) of the Convention, he reiterated the comment in the previous concluding observations that the report lacked information on the actual economic, social and educational situation of the indigenous population. That applied also to the Black community. Although paragraphs 96-98 of the report quoted constitutional and legal provisions, more factual information was needed on such matters as the level of unemployment in the indigenous and Black communities and the extent of their entitlement to health care and other services.

25. In connection with article 6, while he noted with interest the long list of judgements contained in paragraph 108 of the report, more information was needed about the nature of judicial decisions and developments. The Committee's previous question about whether international instruments could be invoked before the courts in Colombia had gone unanswered and called for a reply. Information was also required on the right to seek just reparation or satisfaction for any damage suffered as a result of discrimination.

26. When Colombia's previous report had been considered, the Committee had asked whether Colombia envisaged making the declaration provided for under article 14 of the Convention and had been assured by the representative that a reply would be forthcoming in the next report. Such a declaration would be consistent with Colombia's ratification of the Optional Protocol to the International Covenant on Civil and Political Rights. He also drew attention to the amendment to article 8 of the Convention concerning the financing of

the Committee from the regular budget of the United Nations. The amendment had been endorsed by the General Assembly but required ratification by a two-thirds majority of States parties in order to enter into force. He hoped that Colombia could accept the amendment.

27. Mr. VALENCIA RODRIGUEZ said that the seventh periodic report of Colombia demonstrated in exemplary manner the measures that could be taken to protect socially and economically disadvantaged minority groups. The new Constitution represented a breakthrough in the recognition and promotion of legal, social and political equality for all, including the Black and indigenous communities. Article 10 of the Constitution, which recognized the right of ethnic groups to have their languages and dialects recognized as official in their respective territories and the right to bilingual education, was especially commendable. Implementation of those and other rights listed under paragraph 13 of the report would call for long-term, coordinated action by all State bodies and the involvement of the people at large. He welcomed the establishment of the new Ministry of the Interior, replacing the former Ministerio de Gobierno, which should lead to improved coordination and administrative control.

28. Regarding the protection of the rights of Black communities, Law No. 70, was intended, inter alia, to regulate the de facto occupation by Black communities of lands in rural areas adjoining the rivers of the Pacific Basin. The process of establishment of title to lands would obviously take time, but he wished to know whether it had given rise to social or economic problems and, if so, who had felt affected by them and how they had been resolved. He was curious about the response of the Black communities to the measures taken to guarantee their participation in mechanisms and bodies set up to promote their fundamental rights, and he asked what progress had been made in the activities of the study commission established to draw up a development plan for the Black communities.

29. With reference to Decrees Nos. 1088 and 1809 of 1993, which regulated the right of indigenous communities to govern themselves according to their traditions and customs, he pointed to the stipulation in article 246 of the Constitution that the jurisdictional functions assigned to indigenous communities were to be exercised within their territorial boundaries in accordance with their own laws and procedures so long as the latter were not contrary to the Constitution or the laws of the Republic. He asked how that provision had been applied in practice and whether there had been any cases of conflict between the exercise of that jurisdiction and constitutional and legal provisions. With regard to the political representation and legal protection of the indigenous communities, he asked to what extent the provisions of article 171 of the Constitution and the processes referred to in paragraph 52 of the report had been put into effect. He also requested information on reports of recent political assassinations and other violations of the rights of indigenous communities.

30. It would be useful for the Committee to receive further clarification of the features which distinguished the resguardos or indigenous territories from indigenous reservations in other countries and of their contribution to social mobility and the defence of collective land ownership.

31. Paragraphs 73-85 described various legal provisions designed to ensure compliance with article 4 of the Convention, but Law No. 130 appeared to apply specifically to electoral activities. Further information was therefore needed on the provisions of the draft Bill to regulate the constitution and activities of civil organizations, referred to in paragraph 77. With regard to the dissemination of ideas based on racial hatred, the measures reported in paragraphs 78-85 fell somewhat short of the broad requirements of article 4 (a) of the Convention. The Government might therefore wish to review its legislation and take due account of the views expressed by the Committee on several occasions, as reflected in General Recommendation XV. The information provided on the implementation of article 5 of the Convention was satisfactory, and the details concerning available remedies, in paragraph 104 of the report, satisfied the requirements of article 6. The list of judgements handed down in cases involving the Amerindian peoples and the Afro-Colombian communities showed that there was a collective awareness among those groups of the nature and scope of their rights and the opportunities for seeking redress. However, a summary of the sentences imposed could facilitate understanding of the disputes involved and the scope of the judgements.

32. With regard to article 7 of the Convention, he particularly commended the activities carried out under the National Education for Democracy Project, the project on consolidation of the machinery for protection and defence of human rights at the local level and the Ethnic Education Programme, and he requested details of any international cooperation component in these activities.

33. Mrs. SADIQ ALI asked whether any progress had been made with regard to the concerns expressed by the indigenous peoples of the river Sinu about the planned expansion of the Urra power station, which would involve the flooding of part of their territory. She noted that a judge had ruled against the extraction of gold in the Guainía reservation (resguardo), where many indigenous people lived, yet gold dredging had increased, with the result that the water in the territory had been contaminated. She asked whether any action on the matter was contemplated. There had been an alarming proliferation of paramilitary groups in the service of landowners and drug traffickers. As a result, the recovery of lands for indigenous and peasant communities had met with strong opposition and indigenous leaders had been killed. In March 1994, four Zenu leaders from the San Andrés de Sotavento reservation had been removed from a bus by a group of uniformed people and killed.

34. The survival of the Nukak, the last hunter-gatherer people in Colombia, was under serious threat, despite an urgent appeal by the National Indigenous Organization of Colombia (ONIC) to the United Nations in July 1993 calling for their rights to be guaranteed. Since then their situation had been aggravated by the invasion of colonists, with a resulting increase in fatal diseases. The legal framework for creating a reservation for the Nukak had been in place since November 1992, but as far as she knew the requisite action had not been taken.

35. The United Nations Special Rapporteur on Extra-legal, Arbitrary and Summary Executions, after visiting Colombia in 1994, had addressed 40 urgent appeals - a record - to the Government regarding persons whose human rights

had been imperilled. Moreover, the National Police had the world's worst human rights record amongst security agencies in the year ending April 1994. Training should be given to law enforcement agencies to prevent further abuses.

36. Mr. CHIGOVERA said that Colombia possessed an impressive body of laws, copies of which were freely obtainable in the country. That was to be commended. The report, however, lacked information on how those laws were implemented; the same had been true of Colombia's previous report. In a country where 25,000 murders had taken place in 1995, and where there were numerous allegations of torture and intimidation, the suspicion must be that the laws were not implemented, particularly where minority groups were concerned. He recognized that a state of emergency had existed for 38 of the past 46 years. It was also the case, however, that the Constitution provided for a separate military justice system. Both the military and the police enjoyed institutionalized impunity, and there was no evidence that the politicians intended to end that state of affairs. He was concerned that the country's leaders seemed to suffer from a lack of will to stop the killings, and he wondered how Colombia intended to implement its admirable legislation for the protection of all citizens.

37. Turning to specific points, he asked how the "right to own private property", referred to in paragraph 93 of the report, was reconciled with the "right of recognition of the collective ownership of uncultivated lands occupied by Black communities", mentioned in paragraph 13 (p). Secondly, he asked what was meant by the constitutional provision, referred to in paragraph 96 (b), to the effect that workers should have the benefit of the doubt in implementing and interpreting the formal sources of the law in the context of labour disputes, and that realities should take precedence over the formalities established by the parties in the field of labour relations. Lastly, with regard to the right to decent housing, mentioned in paragraph 101, he asked whether citizens could take action against the State for not providing such housing.

38. Mr. LECHUGA HEVIA drew attention to a number of statistics indicating that the indigenous and Afro-Colombian communities were subject to discrimination. For example, 44 per cent of the indigenous population were illiterate - four times the national average. Infant mortality rates were very high, life expectancy, at 54, was some 15 years lower than the national average and the percentages of those receiving primary and secondary education were very low. The problems were not new, but it was a vast task to resolve them through legislation. Another major problem was violence: it appeared that there had been 50 political assassinations in the past year, not to mention other crimes. He wondered what measures the Government intended to take to prevent abuses by law enforcement agencies which enjoyed impunity. The next report should also present a breakdown of the situation of Afro-Colombians, indigenous people and others in relation to access to work, health, education and other aspects of life. That would provide the Committee with a sounder basis on which to assess Colombia's reports. Lastly, in relation to article 4, he asked whether racist propaganda had been declared illegal and whether racist organizations existed.

39. Mr. YUTZIS said that the report's main drawback was the lack of basic demographic information. Clearly it was often difficult to collect such information and sometimes the methods of doing so were faulty; but it would have been useful if, for example, the tables given in paragraph 33 of document HRI/CORE/1/Add.56, on the rate of unemployment, had indicated some kind of social breakdown, if not necessarily a racial one. He was puzzled by the distinction made in those tables between the unemployed and the inactive population. Colombia should include some kind of demographic map in its next report.

40. The distribution of land was also an important issue, yet the Committee had too little information to go on. For example, a case was currently being heard regarding a petroleum company's licence to exploit an indigenous territory, but the facts of the case were not clear. The Committee could not deal properly with the report because the figures had not been made available. He was impressed by the Programme of Support and Ethnic Strengthening on Behalf of the Indigenous Peoples of Colombia 1995-1998, although it did not fulfil all the requirements of article 4 of the Convention.

41. The CHAIRMAN, speaking as a member of the Committee, said he had three questions to ask. First, he wished to know whether, since there had been allegations that the rights of indigenous peoples had been violated by men in uniform, police and soldiers were subject to the same laws as civilians in conflict situations and, if not, whether the Government was satisfied that the law was properly applied when there were allegations of police or army misconduct. Secondly, he asked whether it was a defence in law for a soldier to say that he was acting under orders when he was responsible for what would otherwise be an unlawful killing. Thirdly, he asked how often investigations were carried out on the issue of unlawful orders to the military and the police.

ORGANIZATION OF WORK (continued)

42. The CHAIRMAN informed the Committee of recommendations arising from the meeting of the Bureau earlier that afternoon. Regarding the conditions under which members of the Secretariat could address the Committee, and bearing in mind the need for advance notice and coordination in that respect, it had been decided that Mr. de Gouttes should act as coordinator on the subject. Mr. de Gouttes could have a private meeting with the High Commissioner for Human Rights at which he might reach an understanding that could obviate the need for the High Commissioner to address the Committee. Lastly, Mr. Garvalov and Ms. Sadiq Ali had agreed to act as coordinators on writing a revised and fuller text concerning article 7, in pursuance of the proposal to review the implementation of that article, agreed with the Sub-Commission on Prevention of Discrimination and Protection of Minorities at the previous session.

The meeting rose at 6 p.m.

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COMMITTEE ON THE ELIMINATION OF RACIAL DISCRIMINATION

Forty-eighth session

SUMMARY RECORD OF THE 1136th MEETING

Held at the Palais des Nations, Geneva,
on Friday, 1 March 1996, at 10 a.m.

Chairman: Mr. BANTON

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CONSIDERATION OF COMMUNICATIONS UNDER ARTICLE 14 OF THE CONVENTION

OTHER BUSINESS

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GE.96-15463 (E)

The meeting was called to order at 10 a.m.

CONSIDERATION OF REPORTS, COMMENTS AND INFORMATION SUBMITTED BY STATES PARTIES UNDER ARTICLE 9 OF THE CONVENTION (agenda item 6) (continued)

Sixth and seventh periodic reports of Colombia (CERD/C/257/Add.1) (continued)

1. At the invitation of the Chairman, the members of the Colombian delegation resumed their places at the Committee table.

2. The CHAIRMAN invited the Colombian delegation to reply to the questions put by members of the Committee at the preceding meeting.

3. Mr. GONZALES (Colombia) thanked the members of the Committee for their interest in the human rights situation in Colombia. Some questions had already been considered in other United Nations bodies, especially the Committee against Torture and the Committee on Economic, Social and Cultural Rights. He would therefore confine himself to answering questions specifically related to racial discrimination.

4. Colombia was the scene of many acts of violence attributable both to agents of the State and to paramilitary groups or guerrillas or resulting from drug trafficking or plain delinquency. In 1995, the Colombian Government had undertaken, in the Commission on Human Rights, to apply to the Centre for Human Rights for the provision of advisory services and technical assistance, particularly for the purpose of putting an end to impunity in the country, and had established a Committee to implement the recommendations made by the Commission's thematic rapporteurs following their visits to Colombia. A bill for the establishment of a system of compensation for damage caused by human rights violations perpetrated by agents of the State had been drawn up. Important steps had also been taken to reform the criminal and military justice systems. An institutional reform process had been initiated in 1991 and a large number of legislative measures designed to combat racial discrimination against indigenous and Afro-Colombian groups had been adopted. Those reforms had been necessary and did not constitute "over-institutionalization", as Mr. van Boven seemed to think.

5. In reply to a question by Mr. Lechuga Hevia, he said that Colombia had always rejected apartheid and racial discrimination. The statistics which he had mentioned and which showed substantial inequalities among different population groups with regard to education and health related to only one part of the national territory, the Pacific coast. The statistics submitted by the Colombian Government to the Committee on Economic, Social and Cultural Rights were very different and showed the progress made in reducing the social gap. The country's four-year development plan (El Salto Social) had been drawn up in order to provide better protection for the social, economic and cultural rights of the population, particularly the most disadvantaged social sectors.

6. With regard to Mr. Chigovera's question concerning the effects of the state of emergency on the rights of minorities, he pointed out that the Colombian Constitution had been amended and now prohibited any suspension of human rights and fundamental freedoms during a state of emergency. Paragraphs 108 to 110 of the report listed the many judgements handed down by

different judicial organs and the Constitutional Court to protect the rights of the country's indigenous and Afro-Colombian populations and the text of those judgements could be made available to members of the Committee if they so desired. The Constitutional Court had also handed down an important judgement which stated that due obedience to military orders could not be invoked as a defence in human rights cases.

7. In reply to a question by Mr. van Boven, he said that the problems of the Uraba region were explained by the fact that the region was not racially homogeneous and was the scene of a struggle between two armed factions. They were the EPL (Ejército Popular de Liberación), which had laid down its arms and had been converted into a new political party called "Esperanza, Paz y Libertad" (Hope, Peace and Freedom), and the FARC (Fuerzas Armadas Revolucionarias Colombianas), which violently opposed the reintegration of guerrilla movements into civil society. However, the victims of the struggle were not only members of the indigenous and black communities; the entire population was suffering from the consequences. The Colombian Government had informed the competent United Nations organs of the measures taken to punish those responsible for the violations committed, whether by guerrillas, paramilitary groups or members of the police, and to prevent the enlistment in the armed forces of children under 18 years of age, who often came from indigenous groups. He would notify the competent authorities of Mr. van Boven's concern about the disappearance of Mr. José Casedes Gonzales.

8. The establishment of the office of an Ombudsman under the 1991 Constitution had marked a very important stage in the protection of human rights in Colombia. The Ombudsman was legally empowered to file an application for "protection" before the courts. Any citizen could institute such proceedings, under which he could seek compensation if he considered that his constitutional right had been or might be violated. The Colombian Government was open to international cooperation in the field of human rights and had already received aid from Norway to help persons who had been displaced within the country as a result of violence, not all of whom were members of ethnic minorities.

9. Mr. MURILLO MARTINEZ (Colombia) said that his Government had taken important steps to combat the cultural and social discrimination to which, according to the Andean Commission of Jurists, certain indigenous and Afro-Colombian communities continued to be subjected. Nevertheless, he considered that the results could be assessed only in the long term. Initially, it was important to take account of each community's specific features and potentialities and to improve existing "ethnic education" programmes designed to meet the expectations of ethnic groups by making allowance for their cultural values.

10. With regard to the penalties applicable in cases of human rights violations, contemporary forms of racial discrimination had to be seen in the context of everyday Colombian life. The Latin American countries had experienced slavery in the past and certain subtle forms of racial discrimination which could not be examined in the light of the usual considerations were still to be found. It was therefore often difficult to suppress certain acts and forms of behaviour which reflected situations deeply rooted in the country's culture. An example was the frequent opposition of some parents to their child's marrying a person from a different ethnic group.

A very great educational effort was required and it would be desirable for the country to receive assistance from organizations like the United Nations in order to combat existing forms of veiled or often even unconscious racism which escaped all control and could not be repressed.

11. As far as the jurisdiction of the courts specifically established to deal with indigenous community affairs was concerned, Colombian legislation had made great progress, since it permitted members of indigenous communities to be tried with due regard for their particular cultural background. That right was, of course, qualified: an indigenous person who committed an offence outside the jurisdiction of the special courts would be tried by the ordinary courts.

12. With regard to the right of indigenous communities to exploit their natural resources and to the extent of their autonomy in such matters, Colombian legislation contained a large number of provisions prohibiting the exploitation of natural resources located in the territory of an indigenous community unless that community's consent was given and its rights were guaranteed. Those provisions were effectively implemented. The process of assigning lands to black communities provided for by Act No. 70 of 1993 under the agrarian reform programme had been regulated by a decree dated 12 October 1995. It was thus a completely new reform in its initial stages. Several community councils had already been established. Of course, the reform gave rise to a number of social and economic problems, since it created conflicts of interest between the large enterprises which exploited the natural wealth of the regions concerned and the local communities to which that right accrued, but, despite such transitory difficulties, it would make it possible to ensure a better distribution of resources in favour of the indigenous communities.

13. The resguardos were not reservations, but lands held collectively by the indigenous communities to which they had been assigned to enable them to preserve and develop their cultural and social traditions. Those communities were fully free to move throughout the national territory. Their property rights to such lands were inalienable and imprescriptible. It should be noted that the allocation of permits to exploit natural resources situated on the lands in question had been frozen until the adoption of the Decree of 12 October 1995 so as to protect the rights of the black communities who were to receive the lands. The black communities' right to collective property was not incompatible with the right to individual property.

14. The implementation of the legally recognized principle of equality in employment, according to which everyone had the same rights in matters of employment and work, sometimes came up against difficulties in practice because of structural factors arising from the country's history. No doubt specific measures would have to be adopted, as had been done in the case of admission to university, in order to guarantee the effective implementation of the law.

15. Replying to another question put by the Committee, he explained that the black communities had reacted very favourably to the Colombian Government's invitation to them to serve on the high-level advisory commission established to verify the implementation of Act No. 70, since their rate of attendance at the Commission's meetings was on average 96.5 per cent.

16. Mr. GONZALES (Colombia), replying to a number of other questions put by members of the Committee, said that the mechanisms provided to ensure the participation of minorities in the management of public affairs were functioning effectively. There were several black representatives and two senators elected within a special constituency to represent the interests of the indigenous populations in Congress, which also included other parliamentarians of indigenous origin elected in ordinary constituencies.

17. His delegation was willing to provide the Committee with all the information it had on the problems in the area to the north of Santander mentioned by Mr. Yutzis. With regard to the problems caused by the construction of a dam in the Sinu area, negotiations were under way between indigenous representatives and the builders of the dam with a view to finding a compromise solution. The area in which the events of the beginning of 1993 mentioned by Mrs. Sadiq Ali had occurred was an extremely complex area experiencing many different problems connected, inter alia, with the presence of gold diggers, drug trafficking and pollution. In any case, the Government was taking action to protect national minorities and it would inquire into the death of the four indigenous persons referred to by Mrs. Sadiq Ali. He would respond to the request put to him by the Special Rapporteur on extrajudicial, summary or arbitrary executions in that connection.

18. In reply to the question whether there were any housing programmes for indigenous or black communities, he said that, although specific measures had been taken in certain areas, such as in the east of the Department of Cauca, there was not really any national housing policy for indigenous communities.

19. In conclusion, he pointed out that, at the latest Geneva meeting of the Working Group responsible for preparing a draft declaration on the rights of indigenous peoples, the NGOs had issued a special statement in which they had cited the case of Colombia as an example of progress made in realizing the rights of indigenous communities. He invited the Committee to visit his country to verify, on the spot, the progress actually made.

20. Mr. FERRERO COSTA congratulated Colombia on its obvious willingness to engage in a dialogue and on its ample, if not complete, report, which gave an account of the substantial progress made in legislation on aspects of direct interest to the Committee. While welcoming the information supplied in paragraphs 108 to 110 of the report, he requested that some further information on the penalties provided for in cases of racial discrimination should be given in the next report.

21. Despite all its qualities, Colombia's report had certain gaps. For example, it was not explained how the standards adopted, particularly those stemming from the new Constitution, were being put into practice. It would be helpful if the next periodic report could state specifically what consequences the new Constitution had had for the black and indigenous populations, for example, in what concrete cases the Ombudsman had had to intervene and what practical effects the establishment of the National Indigenous Affairs Policy Council and the National Planning Council, mentioned in paragraphs 56 and 57 of the report, respectively, had had on the populations concerned. It would also be helpful if the arrangements for the autonomy of the territorial units referred to in paragraph 5 could be explained in greater detail.

22. He was also concerned about Colombia's reply with regard to the implementation of article 4 of the Convention, since there seemed to be a misunderstanding in so far as the implementation of the article, which was mandatory for States parties, did not presuppose the existence of racist organizations. In the absence of such organizations, the measures to be taken were of a preventive nature, as Peru and Ecuador had understood. In that connection, it was important to state that the Committee most certainly recognized that violations of human rights were being committed both by non-governmental entities and by agents of the authorities, but that it did not conclude from that that the Colombian Government was pursuing a systematic policy of human rights violations.

23. He recommended that the situation in Colombia since the adoption of the new Constitution should be described in a general document which would be prepared for the benefit of all human rights bodies and should also give specific details on the practical implementation of the new legislation.

24. He noted that Colombia had not yet made the declaration provided for in article 14 and urged the Colombian Government to consider the possibility of doing so, thereby following the example of four other Latin American countries. He also asked Colombia to consider ratifying the amendment to article 8 of the Convention.

25. Mrs. ZOU requested the Colombian delegation to give the exact numbers of indigenous and black deputies in Parliament. With regard to the invitation for the Committee to send a representative to Colombia, it seemed to her that, if the Centre for Human Rights was not in a position to finance the trip, the members of the Committee and Colombia itself could look for other sources of financing.

26. Mr. van BOVEN said that, despite what the representative of Colombia seemed to think, some issues of concern to other human rights bodies, such as violence, also fell within the competence of the Committee on the Elimination of Racial Discrimination in so far as they affected members of particular groups. The fact that certain victims were not targeted as blacks or indigenous did not mean that the impact of the violence was negligible. The Committee was joining the bodies which had requested that the exactions should be investigated.

27. It was also regrettable that the Committee had still not received a reply from Colombia on its position with regard to the declaration provided for in article 14 of the Convention. In making that declaration, Colombia would merely be following the path which it had taken when it had ratified the Optional Protocol to the International Covenant on Civil and Political Rights. The question of Colombia's ratification of the amendment to article 8 of the Convention had also not yet been solved. It was to be hoped that the Committee's expectations would soon be satisfied.

28. Finally, unlike what had happened in the case of its other periodic reports, Colombia really should take greater account of the Committee's general conclusions and observations in its next report.

29. Mr. de GOUTTES raised the issue of street children, who were generally members of black or Afro-Colombian minority groups. He asked what the

Government was doing to protect them against enforced enlistment and the exactions of which they were victims. He also requested some further information on the programme for indigenous legal systems referred to in paragraph 59 of the report and on the specific nature, operation, jurisdiction and scope of the indigenous affairs courts.

30. Mr. YUTZIS welcomed the fact that Mr. Gonzales had invited the Committee to send one of its members to Colombia. The Centre for Human Rights should be able to provide it with the resources required to finance the trip.

31. It could not be said that Colombia was pursuing a racist policy. The difficulties encountered by indigenous and black communities were attributable to their economic status. Having conducted his own inquiry, he had learned, for example, that, out of 20,000 students at the State University, there had been not even 180 indigenous students and only 8 of them had obtained their degree in 1995; that the proportion of under-weight new-born babies was very high among indigenous communities; that some indigenous communities were 5 km away from the nearest water supply; and that cholera and dengue fever epidemics were not uncommon.

32. He was also greatly concerned about the implementation of article 7 of the Convention, since a "culture of discrimination" was involved. That problem was, moreover, not peculiar to Colombia, but reflected an almost universal trend. Such a culture was often propagated by the media, which perpetuated certain preconceived ideas. He had been able to ascertain, for example, that in many television programmes the roles of humble people were played by dark-skinned persons. He would like to have some up-to-date information on the implementation of article 7 of the Convention in Colombia's next report.

33. Mr. GONZÀLES (Colombia) expressed his conviction that his country's next report would give an account of considerable progress in the human rights field. Already it could be stated that the Ombudsman was at work and that some of his reports were even being studied by United Nations human rights bodies.

34. The Indigenous Affairs Policy Council and the National Planning Council had already had a practical impact and the statements made the day before and at the current meeting had presented the new model for the protection of the fundamental rights of Colombians. The result of such an institutionalization of the protection of fundamental rights would appear in greater detail in the next periodic report. The factual situation relating to the autonomy of territorial units, which was one of the immediate effects of the application of article 1 of the Constitution, would also emerge much more clearly.

35. He would certainly transmit the Committee's observations on the specific provisions required by article 4 of the Convention to his Government. The more general provisions were already quite effective. The next report would also be supplemented by information on the essence of what had already been submitted to other human rights bodies; he would also indicate Colombia's position regarding the declaration provided for in article 14 and the amendment to article 8 of the Convention.

36. On the other hand, it was unlikely that an exact figure could be given for the number of black and indigenous elected members of the country's deliberative organs, since there were many of them and they did not always stand specifically as indigenous persons. Furthermore, cross-breeding was a characteristic feature of Colombia and deputies, whatever their colour, obtained their seats through popular support after having fought it out with other candidates on a footing of equality.

37. He intended to suggest to his Government that it should supply funds to supplement resources from the Centre for Human Rights to cover the trip to Colombia of a representative of the Committee.

38. The violence which the Government was endeavouring to end affected all citizens, regardless of the colour of their skin, their economic status or even their age.

39. The problem of street children, who came from all ethnic categories of the population, arose mainly in Bogotá and was explained by the socio-economic situation in the country in general and by the exodus from the countryside in particular. The State, through the Colombian Institute for the Protection of the Family, was trying to solve that difficult problem and had already recorded some successful results. The Government had drawn up various programmes to assist socially marginalized groups.

40. With regard to access by indigenous and black persons to higher education, it must be pointed out that the National University of Colombia, which was a public establishment, was not representative of the situation prevailing in the country as a whole. There were, in fact, private universities where fees were lower than at the public universities and which were attended by many Afro-Colombian and indigenous students; the Free University of Colombia and the University of the Cauca were examples.

41. It was true that the nutritional problems experienced by indigenous communities were the cause of diseases such as tuberculosis. The social development plan (El Salto Social) and the indigenous people's programme being implemented by the Ministry of Health and the Ministry of Labour aimed at solving those problems. It would also be necessary to improve the supply of drinking water for the population living in the semi-desert area of the Guajira in order to combat diseases such as cholera and dengue fever.

42. The Government would try to give full effect to the provisions of article 7 of the Convention with regard to the campaign against prejudices that led to racial discrimination.

43. In conclusion, he assured the Committee that the Colombian Government would take due account of its comments and observations, as well as of its recommendations, particularly those relating to article 14 of the Convention, and that it would continue to comply with its obligations under the Convention.

44. The CHAIRMAN thanked the Colombian delegation for the fruitful dialogue which it had established with the Committee. The Committee had thus completed the first part of its consideration of Colombia's seventh report.

45. The Colombian delegation withdrew.

Draft letter to the Committee against Torture (CERD/48/Misc.9) and draft letter to the Permanent Representative of the Federal Republic of Nigeria (CERD/48/Misc.8)

46. Mr. FERRERO COSTA suggested that, in cooperation with Mr. van Boven, he should make a few amendments to the two draft letters and then submit them to the Committee for approval.

47. The CHAIRMAN said that, if there was no objection, he would take it that the Committee accepted that suggestion.

48. It was so decided.

ELECTION OF OFFICERS (agenda item 3) (continued)

49. Mr. RECHETOV proposed that, in the absence of Mr. Diaconu, who was held up in Romania for family reasons and whom the secretariat had not been able to reach, the Committee should elect Mr. Garvalov to the office of third vice-chairman of the Committee.

50. Mrs. SADIQ ALI, Mr. FERRERO COSTA and Mr. de GOUTTES supported that proposal.

51. Mr. Garvalov was elected Vice-Chairman by acclamation.

CONSIDERATION OF COMMUNICATIONS UNDER ARTICLE 14 OF THE CONVENTION (agenda item 7)

52. Mr. SCHMIDT (Secretariat) said that the Committee currently had before it two communications concerning one State party. Despite the reminder that had been sent to it, the State party concerned had still not submitted any observations or explanations to the Committee and had been informed that in any case the Committee would take up the communications in question at its next session. The Centre for Human Rights had also received two other communications, but unfortunately the States parties concerned had not made the declaration provided for in article 14 of the Convention.

53. Mr. YUTZIS said that he would like the Committee to open a debate on the reasons why only 22 States parties had made the declaration under article 14. He wondered whether the slowness with which the Committee had decided on the few communications which had been submitted to it had not deterred some States from making the declaration.

54. Mr. SCHMIDT (Secretariat) said that the Centre for Human Rights had nevertheless done everything it could to make the procedure known to States parties.

55. The CHAIRMAN said that, for its part, the Committee was doing everything in its power to convince States parties to make the declaration and was urging those States parties which had accepted the procedure to give it widespread publicity.

56. Mr. FERRERO COSTA said that he would like the Committee to take up communications in public and not in closed session, as was currently the case.

57. He agreed with Mr. Yutzis that it would be necessary to shorten the duration of the proceedings even if the Committee's rules of procedure had to be amended for that purpose. With that in view, he proposed that the two communications mentioned by Mr. Schmidt should be considered at the present session.

58. Mr. de GOUTTES said that he wondered whether certain communications sent to other treaty bodies ought not in fact to be considered by the Committee and whether the secretariat was acting as a sorting office in that regard.

59. Mr. SCHMIDT (Secretariat) said that, so far, the Committee had never decided on a communication without having taken cognizance of the observations of the State party concerned and that it might not be wise to change that practice.

60. As far as the duration of the proceedings was concerned, the Committee spent on average less time than did the Human Rights Committee in deciding on the communications before it.

61. With regard to the number of communications, it should be pointed out that 87 States had ratified the Optional Protocol to the International Covenant on Civil and Political Rights and that 40 States had made the declaration provided for in article 22 of the Convention against Torture.

62. Furthermore, in the very rare cases in which a petitioner sent a communication to the secretariat without specifying which Committee it was intended for, the secretariat advised the petitioner, but could not tell him what his decision should be.

63. The CHAIRMAN suggested that Mr. Ferrero Costa, in collaboration with any other members of the Committee who so desired, should consider ways of shortening the proceedings and should formulate proposals for that purpose at a forthcoming meeting. If there was no objection, he would take it that the Committee accepted that suggestion.

64. It was so decided.

OTHER BUSINESS

65. The CHAIRMAN said that the reply of the Sixteenth Meeting of States Parties to the letter which the Committee had sent to it (CERD/SP/56) in accordance with a recommendation made by the Meeting of persons chairing human rights treaty bodies was, in his opinion, very disappointing and that the Committee would have to draw the necessary lessons from it in the course of the session. It would be helpful if Mr. Garvalov, who, as Chairman of the Committee, had participated in the most recent Meeting of persons chairing human rights treaty bodies, could give his opinion on the matter at a subsequent meeting.

The meeting rose at 1 p.m.

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Forty-eighth session

SUMMARY RECORD OF THE 1137th MEETING

Held at the Palais des Nations, Geneva,
on Friday, 1 March 1996, at 3 p.m.

Chairman: Mrs. SADIQ ALI

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GE.96-15469 (E)

The meeting was called to order at 3.10 p.m.

CONSIDERATION OF REPORTS, COMMENTS AND INFORMATION SUBMITTED BY STATES PARTIES UNDER ARTICLE 9 OF THE CONVENTION (agenda item 6) (continued)

Tenth, eleventh and twelfth periodic reports of Denmark (CERD/C/280/Add.1 and HRI/CORE/1/Add.58)

1. At the invitation of the Chairman, Mr. Klingenberg, Mrs. Cohn, Mr. Mikkelsen, Ms. Grønborg-Pedersen, Ms. Petersen and Ms. Holt (Denmark) took places at the Committee table.

2. Mr. KLINGENBERG (Denmark) said his Government regretted that its tenth and eleventh periodic reports had been submitted late; it was grateful for the possibility of combining them with the twelfth periodic report in a consolidated document and would make every effort to ensure that future reports were submitted on time. Upholding the principle of equality before the law was a matter of prime importance to the Danish Government, which was fully committed to protecting all persons under its jurisdiction against any form of racial discrimination through laws, regulations and other relevant measures.

3. Denmark was one of the few States parties prepared to consider communications from individuals who claimed to be victims of acts which violated the Convention's provisions. Central and local authorities were working constantly to implement those provisions for the benefit of all residents, irrespective of ethnic origin, in close cooperation with all relevant organizations and groups.

4. The CHAIRMAN invited Mr. Banton, country rapporteur for Denmark, to comment on the tenth, eleventh and twelfth periodic reports contained in document CERD/C/280/Add.1.

5. Mr. BANTON, pointed out that article 1, paragraph 1, of the Convention required the prohibition of any distinction based on race, colour, descent, or national or ethnic origin. Since section 70 of the Danish Constitution of 1952 covered only "creed or descent", he wondered whether any measures to expand that section had been taken since 1952. The laws regulating the registers of public authorities and private bodies prohibited registration of a person's racial or ethnic origin; he wondered whether those laws, not mentioned in the eighth and ninth periodic reports, would hamper ethnic monitoring designed to assess the effectiveness of measures to reduce discrimination against Danish-born persons of immigrant origin. The conclusion, by the Danish Centre for Human Rights, that in criminal and civil cases the definition of racism/racist related to racial superiority might be justified under article 4, but not with regard to obligations under articles 2, 3, 5 and 6. He also wondered whether it was ruled criminally libellous in Denmark to say that Danish society was racist.

6. With regard to article 2, it would have been helpful to have the text, or a summary, of the Folketing's decision B65 of 18 June 1992, which was said to be the main policy statement on integration. It was reassuring to learn that asylum-seekers enjoyed the general protection of the law, including provisions

against racial discrimination. With regard to the conviction of a former Minister of Justice for unlawful obstruction of immigration procedures between 1987 and 1989, he wondered whether the prosecution had alleged that his actions had been motivated by racial discrimination. He noted, too, that the independent Board for Ethnic Equality, mentioned in paragraph 8 had regretted that several ministries gave insufficient priority to furthering ethnic equality. He wondered whether the Danish authorities, when preparing their periodic reports, consulted organizations and movements of the type referred to in article 2, paragraph 1 (e), whether the Government deemed it desirable that the composition of all public agencies, such as the police force, should reflect the local community's ethnic composition, whether the law might be an obstacle to achieving that aim, and how the progress of policies in that area was assessed.

7. With regard to article 3, Denmark's ninth and twelfth periodic reports referred to instances of the application of immigrant dispersal policies by Danish municipalities. Implementation of a dispersal policy meant differential treatment, but that was not always synonymous with less favourable treatment. In his opinion, a dispersal policy could be justified under the Convention if the resultant degree of inequality was reasonable in relation to the goal pursued and the policy was acceptable to a proper tribunal. Proposals put forward by the interministerial Municipalities Committee, if implemented, might help to reduce racial discrimination, but they were of a kind which, in the case of schooling, had led parents in some countries to transfer their children to private schools. The whole matter should therefore be addressed in Denmark's next periodic report, which should also provide further information about the way in which dispersal policies were implemented with respect to local authority housing and State school admissions.

8. Regarding article 4, he wondered whether the Government was satisfied that its relevant legislation was effective, since there had been only three convictions over a six-year period of significant neo-Nazi activity. The recent amendment to the Penal Code, designed to make racial motivation an aggravating feature of an offence, was to be welcomed; but he wondered whether the difficulties mentioned in paragraphs 57 and 58 of the report meant that legislative or administrative changes were needed. He also asked whether an appeal lay against a decision not to prosecute, whether there was a right of private prosecution for offences under section 266(b) of the Penal Code, and whether account had been taken of the Committee's opinion in the case of L.K. v. The Netherlands.

9. He wondered whether Denmark was satisfied with its arrangements for monitoring local radio broadcasts which incited racial hatred, and what sentence had been passed in the case described in paragraph 56 of the report. With respect to the "due regard" clause of article 4, he agreed with the opinion expressed by the European Court of Human Rights, in its judgement in the Jersild v. Denmark case, that the clause was open to various interpretations, but that the Court's interpretation of article 10 of the European Convention was compatible with Denmark's obligations under the United Nations Convention. He proposed that the Committee should collectively affirm its agreement with that judgement.

10. With regard to article 5, he asked the Danish delegation to comment on the proportion of ethnic minorities in the prison population, the results of the inquiry into the alleged use of excessive force against foreign inmates, and the possibility of persons of minority ethnic origin being selected for jury service. Details would also be welcome about the training of police officers in the avoidance of racial discrimination, in accordance with the Committee's general recommendation XIII. He also cited press reports concerning racial attacks in contravention of article 5 (b) of which there was no mention in the twelfth report; and he asked whether the Government was planning to keep separate records of such incidents. It would be interesting to learn what use immigrants had made of the right to vote in local elections, referred to in paragraph 3 of the report, and whether the "other civil rights" referred to in article 5 (d) could be exercised without discrimination in practice as well as in law.

11. He welcomed the bill on the prohibition of unequal treatment in the labour market. With regard to professional appointments, he hoped that the next periodic report would take up the question of the criteria applied with regard to nationality, as well as discriminatory conditions in job advertisements. It was to be hoped that the proposed law would remedy the lack of procedures to protect job-seekers against discriminatory rejection. He was concerned at reports by the Board for Ethnic Equality and other bodies about the disproportionately high level of unemployment among ethnic minorities, low job security, the high incidence of work-related illness and inadequate training and advice; he noted that the Ombudsman had recently criticized the freedom of employers to refuse work to foreigners, and he sought confirmation that the new law would curb such freedom. The Government should consider the 1979 ruling by the Commission for Racial Equality in London, to the effect that asking members of an existing workforce to seek recruits could be discriminatory. It should also consider adopting measures to combat marginalization.

12. On the subject of housing, he asked whether it was unlawful for a private vendor to inform an agent that a property was not to be sold to an immigrant; on the other hand, reported instances of municipal housing associations discriminating in favour of large immigrant families because of their easier access to benefits and rent rebates might also contravene article 5 (e) (iii). With regard to article 5 (e) (iv), he noted that the Board for Ethnic Equality seemed concerned about possible discrimination in hospitals, and invited the Government to report on that subject. He also sought clarification of a report, in the Jyllands-Posten of 29 March 1994, that the Holstebro district council had been found to have acted illegally in demanding to see refugees' passports and residence permits before paying welfare benefits. In connection with the right to education and training, he asked for information about alleged cases, not mentioned in the twelfth periodic report, of parents placing their children in private schools in order to avoid a mixture of religious and ethnic backgrounds. With regard to article 5 (e) (vi), he hoped that the question of a negative image in the mass media, which could possibly lead to discrimination, would be considered in the next periodic report.

13. Referring to paragraphs 52-53 and 68-75 of the report, he asked whether Danish legislation against the refusal of service covered the imposition of a condition which was discriminatory in effect, such as the refusal to serve a

person coming from a locality where many immigrants lived. The figure of two convictions in six years reported in paragraph 52 was suspiciously low. A recent survey in Sweden found much higher rates of self-reported victimization and suggested a high rate of unreported discrimination; there was no apparent reason why it should be lower in Denmark.

14. The Danish Government's delay in meeting its obligations under article 6 of the Convention should be rectified if the bill on the prohibition of unequal treatment in the labour market came into effect. In order to assess the effectiveness of measures under the proposed new law, it would be helpful to receive information on the level of protection afforded under the existing law on the equal treatment of men and women.

15. The support given to neo-Nazi movements by certain groups of young people in Denmark cast doubt on the effectiveness of the measures taken to comply with article 7 of the Convention, as reported in paragraphs 79-82. The problem was not confined to Denmark and there was no obvious solution in sight. Imaginative ways of reaching the young people concerned might be considered, along the lines of the Swedish Government's initiative in detaching youth workers to monitor such groups.

16. Since Denmark had made the declaration provided for under article 14 of the Convention in 1985, only one communication had been received, and he asked whether there was general public awareness of the availability of the remedy.

17. He wondered whether there was any empirical evidence to support the contention in paragraph 15 of the report that outright racial discrimination was rare compared to intolerance arising from fear of social change and of strangers, since there was some evidence to the contrary. To make equality a reality, any plan of action, such as that referred to in paragraph 9, had to concern itself with both the majority and the minorities. Remedial measures should start not with the young but with the groups that practised discrimination - government officials, employers and trade union leaders. He hoped that the Danish Government would ensure that both the Committee's concluding observations and any response thereto received publicity in Denmark, for instance by distributing copies to integrationist multiracial organizations of the kind referred to in article 2.1 (e) of the Convention.

18. Mr. van BOVEN commended Denmark for making the declaration provided for in article 14 of the Convention and ratifying the amendment to article 8 on the financing of the Committee's activities. He welcomed the delegation's assurance that the next periodic report would be submitted on time and hoped that the lack of information on judicial measures would be remedied on that occasion. He trusted that the delegation would appreciate the Committee's concern about recent developments not covered by the report.

19. With regard to the implementation of article 2 of the Convention, the establishment of the Board for Ethnic Equality was a welcome development, consistent with the Committee's general recommendation XVII on the establishment of national institutions, and he looked forward to further information on the Board's activities in the future. He echoed the concern expressed in the report of the Danish Centre for Human Rights about increasingly restrictive practices in respect of family reunion for persons of

foreign origin, a trend also observed elsewhere in Europe. He drew attention to the Committee's general recommendation XIX (47), which clearly explained the continuing relevance of article 3 even in the post-apartheid era, and hoped that it would be taken into account in future reports.

20. In connection with article 4 of the Convention, questions remained about the enforcement of section 266 (b) of the Penal Code. He therefore asked for more information about the policies of law enforcement agencies, how vigilant they were and what reasons could be given for the small number of convictions. He expressed concern about reports that a Danish neo-Nazi party, the Danish National Socialist Movement, had been granted a radio broadcasting licence and had recently begun transmitting. The party was described as having an openly neo-Nazi, racist and anti-Semitic platform.

21. With regard to Mr. Banton's proposal that the Committee should collectively concur with the judgement of the European Court of Human Rights in the case of Jersild v. Denmark, he did not think it appropriate for the Committee to express an opinion on a judgement handed down by that Court.

22. Mr. BANTON (Country Rapporteur), on a point of order, said he was not proposing a pronouncement on the Court's interpretation of article 10 of the European Convention, but that the Committee should express its agreement that the "due regard" clause of article 4 of the International Convention on the Elimination of All Forms of Racial Discrimination ensured a balance of rights. Since the Court in its judgement had referred to a dichotomy of views in the Committee, he felt that it would be in order to confirm that the Committee was now unanimous.

23. Mr. van BOVEN said that the matter might be further discussed among members of the Committee. Returning to Denmark's twelfth periodic report and in connection with article 5 of the Convention, while he commended the provisions of Act No. 289, he felt that insufficient information had been given on the protection and enjoyment of economic, social and cultural rights, especially in employment, housing, welfare and education. For instance, there was evidence of a higher unemployment rate among migrants and foreign citizens than among Danish citizens. He drew attention to article 2, paragraph 2, of the Convention, requiring States parties to take special and concrete measures when the circumstances so warranted. In the case of Denmark, the circumstances did warrant such measures. He appreciated the reluctance to take compulsory measures, but suggested that incentives such as subsidies or tax exemptions might be a way of promoting those rights. In connection with article 6, he wondered whether special measures could be considered to overcome the problem of non-recourse to the ordinary courts - mainly because the procedures were expensive and time-consuming - on the part of persons of foreign origin in particular. He hoped that Denmark would take the necessary steps to implement General Assembly resolution 50/170 which encouraged States parties to ensure that the treaty bodies' reports and concluding observations were translated, published and made widely available.

24. Mr. VALENCIA RODRIGUEZ commended the introduction of legislation entitling immigrants who had resided in Denmark for three years to vote in local elections. He inquired about the results of the implementation of that provision. The ruling by the European Court of Human Rights in the

"green-jacket" case, referred to in paragraph 6 of the report, showed that the Court's opinion differed from that of the Committee, which insisted that freedom of expression should be interpreted in the light of States parties' obligations under article 4 of the Convention and could not be used as an excuse for disseminating racism and racial discrimination. Although the Committee did not have the power to impose its legal opinion on the judicial authorities of States parties, it was its duty to draw the Danish authorities' attention to that important issue.

25. The establishment of the Board for Ethnic Equality was consistent with the provisions and purposes of the Convention, and the Danish Government should be asked to keep the Committee informed about its activities. The same applied to the Committee on Employment Law set up in 1994. He requested detailed clarification of the rights not enjoyed by asylum-seekers and citizens of the former Yugoslavia with special legal status under the temporary protection scheme. He also sought confirmation that ethnic Greenlanders enjoyed the same social and economic rights as Danish citizens.

26. More detailed information was required than that given in paragraphs 22 and 23 about the activities of the Danish Refugee Council and the new initiatives planned. The information provided in paragraphs 30-55 on the implementation of article 4 of the Convention demonstrated Denmark's serious commitment to fulfilling its obligations. Both the wording and the interpretation of section 266 (b) of the Penal Code were consistent with article 4 (a) of the Convention. The scope of criminal liability under section 266 (b), as described in paragraph 34, was particularly commendable. With reference to paragraph 42, he asked whether the Parliamentary Ombudsman had exercised his power to order the prosecuting authorities to carry out a preliminary investigation or institute proceedings before the ordinary courts in cases of violation of the prohibition of racial discrimination. If so, information on such cases was requested.

27. He welcomed the fact that Danish legislation on racist organizations complied with the requirements of article 4 (b) of the Convention. He was interested in the cases brought under section 132 (a) (1) of the Penal Code and hoped that the Government would keep the Committee informed about current and future cases. He noted that the Act on the prohibition of discrimination (No. 289) provided for penalties against non-profit-making undertakings which refused to serve people on racial grounds. He wondered what action was taken if such an act of discrimination occurred in a profit-making business and where the difference lay. Again, he looked forward to hearing more details, particularly with regard to the meaning of the phrase "on the same conditions as others" in section 1 of the Act. While accepting that verbal or written statements made within a general political framework, as well as serious scientific research, should not be actionable, he stressed that the courts should consider the intention behind such statements; the line between the acceptable and the unacceptable could easily be blurred and the courts should show the utmost discretion in judging such cases.

28. With regard to article 6 of the Convention, he was confident, on the basis of paragraphs 77 and 78, that Denmark was fulfilling its obligations. On article 7, too, he noted that the Government planned to include more comprehensive instruction on such issues as racial discrimination, intolerance

and human rights in State education curricula. He hoped that the next report would explain what measures had been taken in that respect. He also welcomed the fact that the Danish Red Cross published a newspaper concerning asylum-seekers.

29. Mr. RECHETOV gave the report high praise. It not only provided details of the Constitution and other legislation, but specified the criteria on which they were based; the relevant case law was also quoted. He applauded the fact that new immigrants benefited from comprehensive integration programmes, even to the extent of being authorized to vote in local elections. He was, however, concerned that the desire not to inhibit freedom of expression had made it possible for expressions of racial hatred to go unpunished. There should be no question of freedom of expression in such cases. He asked what action the Government had taken to disseminate the Convention and to make the public aware of the existence of the Committee. He also wondered when the Convention had been translated into Danish. Some countries translated it into their own language immediately upon ratification, while others dragged their feet.

30. Noting that, according to document HRI/CORE/1/Add.58, paragraph 14, life expectancy in Greenland was substantially lower and infant mortality substantially higher than in the rest of the country, he inquired into the reasons for that situation. He wondered whether nuclear weapons had at any time been stationed in Greenland or whether nuclear testing had been carried out on land that was far from European Denmark.

31. Mr. GARVALOV, while commending Denmark's report, said he felt some unease about the phrase "third country" in paragraph 11. People from Eastern Europe were extremely sensitive to the restrictions implied by such a term. He also feared that intolerance, a potentially subtle form of racial discrimination, could mar the otherwise admirable developments mentioned in paragraph 15. He welcomed the setting up of the Board for Ethnic Equality.

32. The Committee had had occasion to impress upon some States parties the mandatory requirements of article 4 of the Convention. As Denmark had never questioned those requirements, he had been surprised to read in paragraph 30 of the report that any person disseminating racially inflammatory information "might" be liable to various sanctions. That provision ought to be strengthened. He also asked whether the associations mentioned in paragraph 43 included those that propounded racism or ideas of racial superiority. With regard to the dissolution of such associations, he applauded the provisions mentioned in paragraph 45, and in that connection he asked whether an association had to register with the courts when it was first established.

33. It appeared that what little racial discrimination existed in Denmark was often directed at Turks, and he wondered whether the delegation could explain why. Lastly, he considered that the report should have contained more information on action taken by Denmark in respect of articles 6 and 7 of the Convention.

34. Mr. YUTZIS urged Denmark to submit its future periodic reports in good time. The Committee on the Rights of the Child had pointed to the need for

Denmark to improve the conditions of interviews with child asylum-seekers and to grant such children automatic entitlement to health care. Similarly, Denmark should attempt closely to monitor the situation of foreign adopted children.

35. One cause for concern in the report was the reference, in paragraph 15, to "the kind of intolerance which springs from a general and often irrational fear of social change and strangers". That statement required elucidation. Clarification was also required of the reference in paragraph 32 to "scientific theories on racial, national or ethnic differences", which did not "fall within the scope of the offences described in section 266 (b) of the Penal Code". An explanation of how that tied in with the so-called "green-jacket" case would be welcome. Given the link established in the same paragraph between such theories and the issue of freedom of expression, the question arose of the limits, if any, to the dissemination of possibly racist scientific theories.

36. The report failed to mention whether the police and prison officials were given training in race relations.

37. Mr. de GOUTTES commended Denmark for having made the optional declaration under article 14 of the Convention. The report provided comprehensive details of criminal legislation to show that Denmark was complying with article 4 of the Convention. With regard to the Jersild v. Denmark case, the Committee was not in a position to take sides on decisions taken by the European Court of Human Rights.

38. He welcomed the reference in paragraph 75 of the report to the fines that could be imposed on legal entities and companies found guilty of racial discrimination. Other States parties should be urged to adopt similar penalties. The information on court rulings in cases involving racial discrimination seemed to show that the Turkish community was particularly vulnerable, and that was cause for concern.

39. An account of the activities of the Board for Ethnic Equality would be welcome, and he asked whether it was fitted to publicize the work of the Committee. Information should also be provided on the activities of the Committee on Employment Law. Regarding the constitutional provision to the effect that associations that incited or engaged in violence could be dissolved by a judgement of a court of law, he asked how the provision was applied in practice, particularly in respect of the "green-jacket" case.

40. Mr. FERRERO COSTA said he did not agree that members of the Committee, as independent experts, should not discuss the decision of the European Court of Human Rights in the Jersild v. Denmark case.

41. Mrs. ZOU Deci deplored the seriousness of some of the cases of racial harassment mentioned in the report. She asked whether immigrants and refugees were treated as an ethnic group after they had become citizens of Denmark and whether they could maintain their linguistic and religious traditions.

42. Mr. CHIGOVERA said that he would have liked to see more information on case law in the report. He invited the delegation to comment on whether

racial barriers prevented racial minorities from approaching the police with complaints; whether minorities were often ignorant of their rights and thus deterred from reporting cases of racial discrimination; and whether the police and law enforcement agencies were reluctant to investigate the complaints they received. It should also comment on the attitude of State officials to a directive that section 266 (b) should be used only in particularly serious situations.

43. The CHAIRMAN, speaking as a member of the Committee, requested information on a case dating back to 1953, when claims for compensation had been lodged by residents after the establishment of a United States military presence in Greenland. She also wondered if United Nations treaties were circulated in Greenland.

The meeting rose at 6 p.m.